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09/579,324	05/25/2000	Thomas Nello Giaccherini	HDM2000-1	7267
7590		05/15/2006	EXAMINER	
Anglin & Giaccherini		LY, ANH VU H		
Post Office Box 1146		ART UNIT		
Carmel Valley, CA 93924		PAPER NUMBER		
		2616		

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/579,324

Applicant(s)

GIACCHERINI ET AL.

Examiner

Anh-Vu H. Ly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-26 is/are rejected.  
7) ☒ Claim(s) 11-24 and 26 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. This communication is in response to applicant's amendment filed March 03, 2006.

Claims 1-26 are pending.

### ***Claim Objections***

2. Claims 11-24 and 26 are objected to because of the following informalities:

With respect to claim 11, in line 13, a semicolon should be inserted right after "accumulated" and in lines 15-16, "said recipient's convenience" lacks antecedent basis.

Claims 12-24 and 26 are automatically objected to as they depend upon objected independent claim 11. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-11 and 14-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Aristides et al (US Patent No. 5,657,072).

With respect to claim 1, Aristides discloses a method for on-demand use of pre-selected content by a recipient, comprising the steps of:

utilizing the excess capacity of a network by conveying data over said network during a period of less than maximum usage (Fig. 4, steps 100 and 102 and col. 7, lines 59-61);

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said data including a plurality of different on-demand programming which may be viewed at said recipient's convenience (col. 3, lines 10-21, the system transmits at least some program data records to many of the subscriber's during off-demand times prior to peak times. The program records are stored at the set-top boxes and the EPG displays the programming information contained in the stored program data records. Herein, the program data records are different on-demand programming corresponding to different channels);

receiving and storing said data at a customer's premises during said period of less than maximum usage (Fig. 4, steps 102 and 104 and col. 8, lines 12-13);

accumulating said data over an extended period of time (Fig. 4, step 104 and col. 8, lines 12-13); and

selectively retrieving one or more of said plurality of different on-demand programming by said recipient for on-demand use at a time after said extended period of time (col. 8, lines 13-17).

With respect to claim 2, Aristides discloses that wherein the network includes a satellite (col. 4, line 1).

With respect to claims 3-8 and 14-15, Aristides discloses that wherein satellite operates in LEO, MEO, HEO, and GEO (col. 4, line 1 discloses satellite systems for carrying video image and other data transmission types. Herein, it is known that satellite can operate at different orbits and the system including a sub-orbital platform).

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With respect to claims 9 and 16, Aristides discloses that wherein the network includes a terrestrial wired network (col. 3, line 66 – col. 4, line 9).

With respect to claims 10 and 17, Aristides discloses that wherein the network includes a terrestrial wireless network (col. 3, line 66 - col. 4, line 14).

With respect to claim 11, Aristides discloses an apparatus (Fig. 1) comprising:

a gateway means (Fig. 1, elements 60 and 62) for transmitting a plurality of digitized packets of data;

a relay means (Fig. 1, elements 68 and 70) for receiving said plurality of digitized packets of data from said gateway means and for retransmitting during a time period when the total communications capacity of said relay means is not fully used (Fig. 4, step 102);

a receiver means (Fig. 5) for collecting said plurality of digitized packets of data which are transmitted from said gateway means;

said receiver means including a storage means (Fig. 5, element 206) for accumulating said plurality of digitized packets of data incrementally over an extended period of time; and

means for selectively retrieving and using one or more of said plurality of digitized packets of data after a generally full program has been accumulated (col. 8, lines 36-62);

said plurality of digitized packets of data provides a plurality of different on-demand programming which may be viewed at said recipient's convenience (col. 3, lines 10-21, the system transmits at least some program data records to many of the subscriber's during off-demand times prior to peak times. The program records are stored at the set-top boxes and the

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EPG displays the programming information contained in the stored program data records.

Herein, the program data records are different on-demand programming corresponding to different channels).

With respect to claims 18-19, Aristides discloses that in which the receiver means is located on and/or above the Earth's surface (Fig. 1).

With respect to claims 20-24, Aristides discloses that in which the receiver means is located in a fixed terminal, a portable terminal, a mobile terminal, a sub-orbital platform, satellite in orbit (Fig. 5 discloses a block diagram of a user interface unit. Herein, the unit can be hooked up to any system or to any device).

With respect to claims 25 and 26, Aristides discloses that prior to conveying said data over said network, transmitting said data from a terrestrial station to said satellite over said network during a period of less than maximum usage of said network (Fig. 1 discloses that the media server provides the data programs to the transceiver 66 for transmitting to the satellite system, col. 4, line 1, when the usage of the network is not maximized, otherwise, the satellite would not be able to receive full data programs when the network is maximized or overloaded).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aristides et al (US Patent No. 5,657,072) in view of Picco et al (US Patent No. 6,029,045).

With respect to claims 12 and 13, Aristides discloses an interactive entertainment network (Fig. 1). Aristides does not disclose that in which the receiver means is shielded to eliminate local radio frequency transmissions that could be used to make an unauthorized copy and/or tamper-proofed to thwart unauthorized copying. Picco discloses receiver means is shielded to eliminate local radio frequency transmissions and tamper-proofed to thwart unauthorized copying (Fig. 3, discloses that the set-top box is already shielded and tamper-proofed by the manufacturer). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the features of shielding and tamper-proofed of the receiver means in Aristides's network, as suggested by Picco, to eliminate interference and protect information.

#### ***Response to Arguments***

5. Applicant's arguments filed March 03, 2006 have been fully considered but they are not persuasive.

Applicant argues in page 13 that Aristides fails to disclose or teach that data provides a plurality of different on-demand programming which may be viewed at recipient's convenience. Examiner respectfully disagrees. Aristides discloses (col. 3, lines 10-21) that the system transmits at least some program data records to many of the subscriber's during off-demand

times prior to peak times. The program records are stored at the set-top boxes and the EPG displays the programming information contained in the stored program data records. Herein, the program data records are a plurality of different on-demand programming corresponding to different channels, which may be viewed by the user at any time.

Applicant further argues in page 16 that according to Aristides, the program guide is one program and does not include a library of programming that may be individually selected by a recipient at a time of the recipient's choosing. Examiner respectfully disagrees. First of all, each data record is considered as an on-demand programming therefore, data records are corresponded to a plurality of different on-demand programming. Herein, the user is free to choose and view the content of each channel or each on-demand programming at different time slots.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.




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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh-Vu H. Ly whose telephone number is 571-272-3175. The examiner can normally be reached on Monday-Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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CHI PHAM  
SUPERVISORY PATENT EXAMINER  
5/12/06